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769-275 (ITW 12830)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: John H. Schneider et al.

Art Unit: 3727

Serial No.: 09/761,500

Examiner: Jes Pascua

Filed: January 16, 2001

Customer No. 51468

For: **TAMPER EVIDENT RESEALABLE PACKAGING**

TRANSMITTAL OF REVISED APPEAL BRIEF

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S I R:

Further to the Order of June 7, 2005 and the Office Communication of June 20, 2005, enclosed is an original revised brief to the Board of Patent Appeals and Interferences and three photocopies thereof. This revised Appeal Brief has been prepared in accordance with 37 CFR §41.37. Any fees may be charged to Deposit Account 50-1145, Order No. 769-275.

Respectfully submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

Application Serial No. 09/761,500

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Art Unit: 3727

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TAMPER EVIDENT RESEALABLE PACKAGING

Ex parte: John H. Schneider
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REVISED BRIEF FOR THE APPELLANTS

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I. REAL PARTY IN INTEREST

The real party in interest is assignee Illinois Tool Works Inc.

II. RELATED APPEALS AND INTERFERENCES

An Appeal Brief dated August 9, 2004 was filed with the Board of Patent Appeals and Interferences for divisional application serial no. 10/336,935, filed January 6, 2003. An Appeal Brief dated February 17, 2005 was filed for divisional application serial no. 10/336,954, filed January 6, 2003.

III. STATUS OF CLAIMS

Claims 1-4 are rejected.

IV. STATUS OF AMENDMENTS

No after-final amendments were filed in response to the final Office Action of April 20, 2004. The Notice of Appeal was filed July 20, 2004 with an apparent Office filing date of July 29, 2004. The original Appeal Brief was filed on September 29, 2004.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The presently claimed invention is a reclosable package (Fig. 1, element 110; see generally, last paragraph of page 5 and first paragraph of page 6) having a top (Fig. 1, element 18), bottom (Fig. 1, element 16), and sides (Fig. 1, elements 20, 22), said package comprising a first wall (Fig. 1, element 12) and a second wall (Fig. 1, element 14) opposite to said first wall; a first zipper profile (Fig. 3, element 28, numeral shown in Fig. 2) having a first interlocking

member (Fig. 3, element 32, numeral shown in Fig. 2) being positioned proximate to said distal end of said first flange portion, a portion of said first flange portion being attached to said first wall along a line extending substantially from side to side of said package (Fig. 3, element 40, numeral shown in Figure 2) and said distal end of said first flange portion being free of attachment to said first wall; a second zipper profile (Fig. 3, element 30, numeral shown in Fig. 2) having a second interlocking member (Fig. 3, element 34, numeral shown in Fig. 2) engageable with said first interlocking member and a second flange portion (Fig. 3, element 38, numeral shown in Fig. 2), said second flange portion having a distal end, said second interlocking member being positioned proximate to said distal end of said second flange portion, a portion of said second flange being attached to said second wall along a line extending substantially from side to side of said package (Fig. 3, element 42, numeral shown in Figure 2) and said distal end of said second flange portion being free of attachment to said second wall; and at least one of said walls and flange portions forming a wall segment beyond the attachment line of said wall to its associated flange portion (Fig. 3, elements 44 and 46, numerals shown in Fig. 2), said segment extending over said profiles' interlocking members and being sealed to an opposite one of said segments thereby forming a seal (Fig. 3, element 50), said seal providing a frangible connection to provide a tamper-evident feature for said reclosable package (page 6, lines 14-18).

VI. GROUND OF REJECTION TO BE REVIEWED UPON APPEAL

1. Does the specification comply with 37 C.F.R. §1.75(d)(1) with respect to antecedent basis for the claim term “distal end”?

2. Is Claim 1 patentable under 35 U.S.C. §102(b) over the Thompson reference (U.S. Patent No. 5,224,779) ?

3. Are Claims 1-4 patentable under 35 U.S.C. §102(e) over the Tilman reference (U.S. Patent No. 6,412,254)?

4. Are Claims 1-4 patentable under 35 U.S.C. §103(a) over the Tilman reference in view of the Thomas reference (U.S. Patent No. 5,713,669)?

5. Are Claims 1-4 patentable under 35 U.S.C. §103(a) over the Ausnit reference (U.S. Patent No. 6,131,169) in view of the Thomas reference?

6. Are Claims 1-4 patentable under 35 U.S.C. §103(a) over the Thomas reference?

VII. ARGUMENTS

1. Does the specification comply with 37 C.F.R. §1.75(d)(1) with respect to antecedent basis for the claim term “distal end”?

It is respectfully submitted that the term “distal end” is a commonly used term in patent prosecution and should cause no ambiguity or confusion in interpretation and that the rejection under 37 C.F.R. §1.75(d)(1) is overcome.

2. Is Claim 1 patentable under 35 U.S.C. §102(b) over the Thompson reference (U.S. Patent No. 5,224,779) ?

The Office Action rejected Claim 1 under 35 U.S.C. §102(b) as anticipated by the Thompson reference (U.S. Patent No. 5,224,779). The Office Action references Figure 4 of the Thompson reference and states that the distal ends of the first and second flange portions are free of attachment to the first and second walls. However, Figure 4 of the Thompson reference discloses the interlocking members being on ends of the flange which are opposite from the ends which are free of attachment to the first and second walls. Therefore, the Thompson reference cannot disclose both “said first [or second] interlocking member being position proximate to said distal end of said first [or second] flange portion” and “said distal end of said first [or second] flange portion being free of attachment to said first [or second] wall”. This is not a minor matter as the configuration of the Thompson reference would not allow for the use of a slider.

It is therefore respectfully submitted that this rejection is overcome.

3. Are Claims 1-4 patentable under 35 U.S.C. §102(e) over the Tilman reference (U.S. Patent No. 6,412,254)?

The Office Action rejected Claims 1-4 under 35 U.S.C. §102(e) as anticipated by the Tilman reference (U.S. Patent No. 6,412,254). It appears from Figure 4 that “first closed edge 18” of Figure 2 is created by folding the web, rather than by a seal, as is recited in the presently pending claims, to wit, “said segment extending over said profiles’ interlocking members and being sealed to an opposite one of said segments thereby forming a seal, said seal providing a frangible connection to provide a tamper-evident feature for said reclosable package”.

It is therefore respectfully submitted that this rejection is overcome.

4. Are Claims 1-4 patentable under 35 U.S.C. §103(a) over the Tilman reference in view of the Thomas reference (U.S. Patent No. 5,713,669)?

The Office Action rejected Claims 1-4 under 35 U.S.C. §103(a) as obvious over the Tilman reference in view of the Thomas reference (U.S. Patent No. 5,713,669). As the “first closed edge 18” of Figure 2 of the Tilman reference is created by folding the web, rather than by a seal (see quoted claim language in numbered paragraph 3, immediately hereinabove), it is respectfully submitted that the manufacturing processes of the Tilman and Thomas references are completely different and that while these references may appear to have somewhat similar individual components, these references have widely different configurations and their combination with regard to certain features would inevitably result in conflicts of purpose.

It is therefore respectfully submitted that this rejection is overcome.

5. Are Claims 1-4 patentable under 35 U.S.C. §103(a) over the Ausnit reference (U.S. Patent No. 6,131,169) in view of the Thomas reference?

The Office Action rejected Claims 1-4 under 35 U.S.C. §103(a) as being obvious over the Ausnit reference (U.S. Patent No. 6,131,369) in view of the Thomas reference. It appears that the Ausnit reference discloses a tear-away header (see the two perforations 54 on the lower portion of Figure 5, also see col. 3, lines 45-46) while the Thomas reference discloses separate portions of web material (first and second upstanding panels 36, 38) which are apparently separate from (but thermally fused to) the web of the sides of the bag and separate from the flanges of the zippers (see Figure 1).

This is quite different from the presently pending claim language “at least one of said walls and flange portions forming a wall segment beyond the attachment line of said wall to its associated flange portion, said segment extending over said profiles’ interlocking members and being sealed to an opposite one of said segments thereby forming a seal, said seal providing a frangible connection to provide a tamper-evident feature for said reclosable package”.

Moreover, there is nothing in the prior art to teach the combination of the two references.

It is therefore respectfully submitted that this rejection is overcome.

6. Are Claims 1-4 patentable under 35 U.S.C. §103(a) over the Thomas reference?

The Office Action rejected Claims 1-4 under 35 U.S.C. §103(a) as being obvious over the Thomas reference. The Thomas reference discloses separate portions of web material (first and second upstanding panels 36, 38) which are apparently separate from (but thermally fused to) the web of the sides of the bag and separate from the flanges of the zippers (see Figure 1). It is respectfully submitted that this is quite different from “at least one of said walls and flange portions forming a wall segment beyond the attachment line of said wall to its associated flange portion”. It is further respectfully submitted that this is not an obvious variation by way of “forming in one piece an article which has been formerly been formed in two pieces and put together” as asserted by the Office Action. This is a completely different structure.

It is therefore respectfully submitted that this rejection is overcome.

The Board is respectfully requested to find all of the presently pending claims to be allowable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ronald E. Brown', with a stylized flourish at the end.

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VIII. CLAIMS APPENDIX

1. A reclosable package having a top, bottom, and sides, said package comprising:
 - a first wall and a second wall opposite to said first wall;
 - a first zipper profile having a first interlocking member and a first flange portion, said first flange portion having a distal end, said first interlocking member being positioned proximate to said distal end of said first flange portion, a portion of said first flange portion being attached to said first wall along a line extending substantially from side to side of said package and said distal end of said first flange portion being free of attachment to said first wall;
 - a second zipper profile having a second interlocking member engageable with said first interlocking member and a second flange portion, said second flange portion having a distal end, said second interlocking member being positioned proximate to said distal end of said second flange portion, a portion of said second flange portion being attached to said second wall along a line extending substantially from side to side of said package and said distal end of said second flange portion being free of attachment to said second wall; and
 - at least one of said walls and flange portions forming a wall segment beyond the attachment line of said wall to its associated flange portion, said segment extending over said profiles' interlocking members and being sealed to an opposite one of said segments thereby forming a seal, said seal providing a frangible connection to provide a tamper-evident feature for said reclosable package.

2. The reclosable package in accordance with claim 1 further comprising a slider disposed upon said interlocking members for movement from side to side of said package between a zipper fully open and a zipper fully closed position, said at least one segment extending over said slider.

3. The reclosable package in accordance with claim 2 wherein a first segment extends from said first wall; a second segment extends from said second wall and said seal comprises a peel seal joining said first and second segments.

4. The reclosable package in accordance with claim 2 wherein a first segment extends from said first wall; a second segment extends from said second wall and said seal comprises a strip of peel seal, said strip having one surface attached to said first segment and an opposite surface attached to said second segment.

Claims 5-46 – (canceled)